Caltex Oil Malaysia Ltd v Classic Best Sdn Bhd & Ors

HIGH COURT (SHAH ALAM) — CIVIL APPEAL NO MT1–12–137 OF 2004
SURIYADI J
27 JUNE 2006

Civil Procedure — Summary judgment — Triable issues raised — Goods sold and delivered — Whether the several written documents collectively constituted a contract reduced into writing — Whether such contract could be contradicted by defendants' oral evidence — Whether triable issues raised by defendants

The plaintiff had delivered goods to the first defendant which had acknowledged the delivery. The first defendant's stamps had been placed on the plaintiff's delivery orders. The plaintiff's delivery orders were duly signed by the first defendant's representatives and addressed to the first defendant. Invoices issued by the plaintiff were also addressed to the first defendant. The first defendant made payment to the plaintiff vide two cheques. The cheques could not be cleared because payment was stopped by the first defendant. The plaintiff sent a letter of demand dated 19 March 2003 vide registered post to all the defendants — the second to fourth defendants being the first defendant's guarantors. The defendants failed to pay the plaintiff and the plaintiff sued in the sessions court. The plaintiff applied for summary judgment which application was dismissed. The plaintiff thus appealed to the High Court.

Held, allowing the appeal:

(1) In cases involving goods sold and delivered such as in the instant case, due emphasis should be placed on the written documents, namely the statement of accounts, invoices, delivery orders, delivery notes and the debit notes. These documents would collectively constitute a contract reduced into writing. Based on the authorities and by virtue of s 92 of the Evidence Act 1950, the defendant could not offer oral evidence to contradict, vary, add to or subtract from, the terms of any contract (see para 10); *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 followed; *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 and *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595 referred.

(2) In the instant case, it was an undisputed fact that the plaintiff had sent statements of accounts to the first defendant and the first defendant had not questioned the plaintiff on the said accounts. This meant that a situation of 'account-stated' had arisen and the defendants were thereby estopped from questioning the statement of accounts (see para 16); *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477 and *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256 referred.

(3) The defendants had not alleged fraud and had even made payment based on accounts supplied by the plaintiff. The first defendant had made payment vide two Bank Utama cheques of which it had stopped payment. The defendants had not questioned the invoices sent by the plaintiff. If indeed they had not received the goods that they ordered, or that they were invoiced for someone else's orders, it was only natural that the objection should have been raised there and then and not after the action was filed. The defendants had also failed to raise any protests or disputes against the letters of demand sent by the plaintiff and did not apply for debit notes in respect of the goods allegedly not received (see para 17).

(4) The defendants had failed to raise any triable issues and the plaintiff's appeal should be allowed with costs (see para 21).

[Bahasa Malaysia summary

Plaintif telah menghantar barangan kepada defendan pertama yang telah mengakui penghantaran tersebut. Stem defendan pertama telah dilatakkan pada pesanan hantaran plaintif. Pesanan hantaran plaintif telahpun ditandatangani oleh wakil defendan pertama dan dialamatkan ke defendan pertama. Invois-invois yang dikeluarkan oleh plaintif juga dialamatkan ke defendan pertama. Defendan pertama telah membaut bayaran kepada plaintif melalui dua cek. Cek-cek tersebut tidak dapat dijelaskan keranan bayaran telah dihentikan oleh defendan pertama. Plaintif telah mengahantar surat tuntutan bertarikh 19 Mac 2003 melalui pos berdaftar kepada kesemua defendan — defendan kedua hingga keempat yang merupakan penjamin-penjamin defendan pertama. Defendan-defendan telah gagal untuk membayar plaintif dan plaintif telah menyaman di mahkamah sesyen. Plaintif telah memohon penghakiman terus yang mana permohonan itu telah ditolak. Oleh itu plaintif telah merayu ke Mahkamah Tinggi.

Diputuskan, membenarkan rayuan:

(1) Dalam kes yang melibatkan barangan yang dijual dan dihantar seperti dalam kes semasa, dengan memberi penekanan terhadap dokumen-dokumen bertulis, seperti penyata akaun, invois, pesanan hantaran, nota penghantaran dan nota debit. Dokumen-dokumen tersebut secara kolektif membentuk satu kontrak bertulis. Berdasarkan autoriti dan menurut s 92 Akta Keterangan 1950, defendan tidak dapat memberikan keterangan lisan untuk menentang, mengubah, menambah atau mengurangkan daripada, terma-terma mana-mana kontrak (lihat perenggan 10); *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 diikut; *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 dan *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595 dirujuk.

(2) Dalam kes semasa, ia adalah fakta yang tidak dipertikaikan bahawa plaintif telah menghantar penyata akaun kepada defendan pertama dan defendan pertama tidak menyoal plaintif tentang akaun tersebut. Ini bermaksud bahawa satu situasi 'account-stated' telah timbul dan defendan-defendan oleh demikian diestopkan daripada menayakan tentang penyata akaun (lihat perenggan 16); *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477 dan *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256 dirujuk.

(3) Defendan-defendan tidak mengatakan adanya fraud mapupun telah membuat bayaran berdasarkan akaun yang dibekalkan oleh plaintif. Defendan pertama telah membuat bayaran melalui dua cek Bank Utama yang ia telah menghentikan bayarannya. Defendan-defendan tidak menyoal tentang invois-invois yang dihantar oleh plaintif. Jika ianya tidak diterima barangan yang dipesan itu, atau ia telah diinvoiskan ke dalam pesanan orang lain, sewajarnya bantahan ditimbulkan pada masa itu dan bukan selepas tindakan difailkan. Defendan-defendan juga telah gagal untuk menimbulkan apa-apa bantahan atau pertiakian terhadap surat tuntutan yang dihantar oleh plaintif dan tidak terpakai untuk nota debit berkaitan barangan yang dikatakan tidak diterima itu (lihat perenggan 17).

(4) Defendan-defendan telah gagal untuk menimbulkan apa-apa isu yang perlu dibicarakan dan rayuan plaintif patut dibenarkan dengan kos (lihat perenggan 21).]

Notes

For cases on triable issues raised, see 2 *Mallal's Digest* (4th Ed) Consolidated Subject Index paras 6616–6625.

Cases referred to

Emperee Industries Sdn Bhd v Renecgo Sdn Bhd [1987] 1 CLJ 477 (refd)
Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka [1979] 2 MLJ 124 (folld)
Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd [1986] 1 CLJ 595 (refd)
Syarikat Tan Thiam Siong Sdn Bhd [1983] 1 CLJ 256 (refd)
YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian [1989] 3 MLJ 490 (refd)

Legislation referred to

Evidence Act 1950 s 92
Subordinate Courts Rules 1980 O 26A

Appeal from: Summons No 3–52–2222 of 2003 (Sessions Court, Shah Alam)

KT Ho (Gan, Ho & Raazlan Hadri) for the plaintiff.
K Shashikala (Prakash & Co) for the defendant.

Suriyadi J (now JCA):

[1] This is the plaintiff's appeal against the decision of the sessions court judge dismissing its application for summary judgment under O 26A of the Subordinate

Courts Rules 1980. The plaintiffs claim against the defendants in the court below is for the amount of RM218,662.80 being goods sold and delivered.

[2] It is the plaintiff's case that the first defendant had since May 2002 ordered goods from the plaintiff and the plaintiff had delivered the goods to the first defendant, the acceptance of which had been acknowledged by the first defendant, who had placed their company chops on the delivery orders. The delivery orders were duly signed by the first defendant's representatives and addressed to the first defendant. The signature and chop on the delivery orders bear the words 'Received Mentioned Goods in Good Condition and Water Free'. Invoices issued by the plaintiff were addressed to the first defendant.

[3] The second, third and fourth defendants were guarantors by virtue of a letter of guarantee dated 20 March 1997. The first defendant made payment to the plaintiff vide two Bank Utama cheques that subsequently could not be cleared because payment was stopped by the first defendant. The plaintiff then sent a letter of demand dated 19 March 2003 vide registered post to all the defendants. Despite the letter, the defendants had all neglected to pay the amount claimed.

[4] The first issue raised by the defendants is that the plaintiff had been told since the first defendant's first letter dated 19 February 2001 to the plaintiff that instructions to deliver goods are subject to terms stated in the letter. The terms are that only authorised personnel named in the Letter may acknowledge receipt of the goods with the company's chop. The plaintiff was given specimen signatures and the chop used for acknowledging receipt of the goods, vide the first defendant's letter dated 19 February 2001. The plaintiff was said to have breached the said terms by allowing unauthorised personnel to receive the goods.

[5] The defendants claimed that the plaintiff's dispute over the letter dated 19 February 2001 is sufficient to show that the issue is triable.

[6] The defendants' second issue is that the first defendant had to stop payment of the two cheques issued to the plaintiff because of some discrepancies in the plaintiff's deliveries.

[7] The defendants' third issue is the alleged wrongful payment for Invoice No 9060383448 dated 28 August 2002, in that it was made by the first defendant without realising that the delivery order was signed by an unauthorised personnel.

[8] The defendants' fourth issue is that the plaintiff's denial that there ever was a meeting with the defendant's representative, Yeap Ai Kean ('the third defendant') could only be determined through a full hearing.

[9] The defendants' fifth issue is about the letter of guarantee. The defendants claim that it is not valid because the plaintiff failed to send statements of account duly signed by the managing director or its authorised representative.

[10] In coming to a decision in cases involving goods sold and delivered such as in this case, I would place due emphasis on the written documents, namely the statement of accounts, Invoices, delivery orders, delivery notes and the debit notes. These documents would collectively constitute a contract reduced into writing. This principle had been laid down in the case of *Pernas Trading Sdn Bhd v Persatuan Peladang Bakti Melaka* [1979] 2 MLJ 124 where Salleh Abas FJ (as he then was), delivering the judgment of the Federal Court said, 'We feel that this course of action is not open to the respondents, as it is clear that under s 92 of the Evidence Act 1950, oral evidence to contradict, vary, add to or subtract from, the terms of any contract, grant or disposition of property which had been reduced in writing is not admissible. The sales invoice and the delivery note being the contract reduced in writing between the appellants and the respondents s 92 therefore applies.' See also *YK Fung Securities Sdn Bhd v Ronald Yeoh Kheng Hian* [1989] 3 MLJ 490 where the High Court had decided that 'he was subsequently furnished with the relevant monthly statement of accounts to which he had no objections, protest or queries.'

[11] Further in the case of *Syarikat Pakar Kayu dan Perdagangan Sdn Bhd v Maa-sk Sdn Bhd* [1986] 1 CLJ 595, also a case concerning goods sold and delivered, the High Court granted the plaintiff's application for summary judgment on the ground that the defendant had not raised any objection or queries even though detailed particulars of the transactions were provided through the monthly statements of accounts.

[12] Based on the above authorities and by virtue of s 92 of the Evidence Act 1950, the defendant in this case cannot offer oral evidence to contradict, vary, add to or subtract from, the terms of any contract.

[13] In the present case, the plaintiff had sent statement of accounts and invoices to the first defendant. The fact is undisputed. Letters of demand were sent by the plaintiff to the defendant and the defendant had neither protested nor questioned the plaintiff on the statements of accounts, invoices, delivery notes, debit notes and the letter of demand. Furthermore, the first defendant had stopped payment of its two cheques issued to the plaintiff without giving any reasons.

[14] In the case of *Emperee Industries Sdn Bhd v Renecgo Sdn Bhd* [1987] 1 CLJ 477, also a case on goods sold and delivered, the High Court allowed the plaintiff's application for summary judgment since the delivery orders had shown that the defendant had acknowledged receipt of each delivery and the plaintiff had issued detailed invoices followed by statements of accounts. The defendant had not attempted to explain away these documents and had in addition to that, not been able to show why he had not protested if indeed he had been invoiced for someone else's goods.

[15] In the case of *Syarikat Tan Thiam Siong Sdn Bhd* [1983] 1 CLJ 256, also a case on goods sold and delivered, the High Court, granting the plaintiff's application for summary judgment, held that: 'The law is that in the event of non-query an account-stated came into existence which created an estoppel against the defendant

from querying the accounts thereafter. There are situations for example if there was fraud, when a query may be permitted but on the facts of the case, no such situation existed.'

[16] Applying the above principles to the present case, it is an undisputed fact that the plaintiff had sent statements of accounts to the first defendant and the first defendant had not questioned the plaintiff on the said accounts. This means that a situation of 'account-stated' had arisen and the defendants are thereby estopped from now questioning the statement of accounts.

[17] The defendants had not alleged fraud and had even made payment based on accounts supplied by the plaintiff. The first defendant had made payment vide two Bank Utama cheques of which it had stopped payment. The defendants had not questioned the invoices sent by the plaintiff. If indeed they have not received the goods that they ordered, or that they were invoiced for someone else's orders, it is only natural that the objection should have been raised there and then and not after this action is filed.

[18] The same goes for the letters of demand sent by the plaintiff. No protests or disputes were raised by the defendants. As for the goods that the defendants alleged they have not received, no debit notes were applied for.

[19] On the first issue raised by the defendants, no evidence was given that the letter dated 19 February 2001 was sent to the plaintiff. Further, the first defendant had made payment vide two cheques and no reason was given by the first defendant as to why it had stopped payment. The defendant had not sent any letter to the plaintiff. The reasons only appear in the affidavit of Yeap Ai Kean and at this stage it would appear to be more of an afterthought. The same applies to the alleged wrongful payment for Invoice No 90603834448 and the alleged meeting with plaintiffs representative in August 2002. I do not see any purpose in raising this issue other than to confuse and delay.

[20] As far as the statement of accounts is concerned, I find that cl 15 of the guarantee does not specify that the statement of accounts should be sent to the second, third and fourth defendants. It merely stated that a statement of account signed by the managing director of the plaintiff or its agent is sufficient and is conclusive proof against the defendants.

[21] By virtue of the above reasons, I find that the defendants have failed to raise any triable issues and I thereby allow the plaintiff's appeal with costs.

Appeal allowed.

Reported by John Paul Simon